MOTION FILED
SEP 2 1988

No. 87-1269 (9)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MARCH FONG EU, ET AL.,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE LIBERTARIAN NATIONAL COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

STUART R. BLATT,
BLATT & ROSENBERG-BLATT,
1101 St. Paul Street, #403,
Baltimore, Maryland 21202,
(301) 539-7800,
Attorney for Amicus Curiae.

Of Counsel:
STEPHEN R. FIELDER,
P.O. Drawer 1760,
Shepherdstown, West Virginia 25443,
(304) 263-8445.

Table of Contents

Table of Authorities ii

Motion

Motion for Leave to File Amicus Curiae Brief 1

Brief

Interest of Amicus 5

Summary of Argument 7

Argument 9

I. The Appellants' asserted state interest in promoting "umbrella" parties implicates an important national interest in unfettered public policy debate 10

II. Statutes implementing the Appellants' asserted state interest have an impact extending beyond the borders of the State of California 12

III. Statutes implementing the Appellants' asserted state interest are contrary to the important national interest in unfettered public policy debate 14

IV. The challenged statutes implicate an important national interest not admitting of divers treatment by the states 15

V. The Appellants' assertion that the challenged statutes reflect party policy is unfounded 17

Conclusion 18

Table of Authorities

Cases:

Anderson v. Celebrezze,
460 U.S. 780, 794 (1983) 15

Cousins v. Wigoda,
419 U.S. 477 (1975) 11

Illinois State Board of Elections v.
Socialist Workers Party,
440 U.S. 173 (1979) 12

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 10, 17

Williams v. Rhodes,
393 U.S. 23 (1968) 11, 12

No. 87-1269

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1987

MARCH FONG EU, et al.,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Appellees.

On appeal from the United States
Court of Appeals for the Ninth Circuit

MOTION OF THE LIBERTARIAN NATIONAL COMMITTEE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES

Motion for Leave to File Amicus Curiae Brief

The Libertarian National Committee moves for leave to file the appended amicus curiae brief in support of Appellees, for that:

1. Consent to file the appended amicus curiae brief in support of the Appellees was requested of the Appellants March Fong Eu, et al., through counsel, and was refused.

2. As more fully appears in the appended amicus curiae brief in support of the Appellees, the Libertarian National Committee is the governing body of the Libertarian Party, a national affiliation of voters constituting a political party, whose associational rights would be adversely affected by a decision in favor of the Appellants.

3. As more fully appears in the appended amicus curiae brief in support of the Appellees, the Libertarian National Committee proposes to brief questions of law concerning the applicability of the Supremacy Clause and First and Fourteenth Amendment guarantees of associational rights, to wit:

Whether the Appellants' asserted state interest in fostering "umbrella" political parties is a legitimate state interest justifying burdens on fundamental associational

rights where such burdens implicate the important national interest in unfettered public policy debate; and

Whether the Appellants' asserted state interest in fostering "umbrella" political parties is a legitimate state interest justifying burdens on fundamental associational rights where such burdens obstruct the ability of national political parties to maintain their own political identity.

4. The Libertarian National Committee has reason to believe that said questions of law will not be adequately addressed by the Appellees, because none of the Appellees is a national political party nor the governing body of a national political party.

5. As more fully appears in the appended amicus curiae brief in support of Appellees, said questions of law may be dispositive of the question of whether the statutes here challenged by the Appellees can withstand constitutional review.

6. As more fully appears in the appended amicus curiae brief in support of Appellees, the Libertarian National Committee can offer a national perspective on

the burdens imposed upon associational rights by the statutes here challenged by the Appellees.

Wherefore, the Libertarian National Committee moves for leave to file the appended amicus curiae brief in support of the Appellees.

Respectfully submitted,

STUART R. BLATT
Blatt & Rosenberg-Blatt
1101 St. Paul Street, #403
Baltimore, Maryland 21202
301-539-7800

Attorney for Amicus Curiae

Of Counsel:
Stephen R. Fielder
P. O. Drawer 1760
Shepherdstown, West Virginia 25443
304-263-8445

No. 87-1269

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1987

MARCH FONG EU, et al.,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Appellees.

On appeal from the United States
Court of Appeals for the Ninth Circuit

BRIEF OF THE LIBERTARIAN NATIONAL COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

Interest of Amicus

The Libertarian National Committee is the governing body of the Libertarian Party, a national affiliation of voters formed for the purpose of nominating and electing candidates advocating libertarian principles to

federal, state and local public office. To effect this purpose, the Libertarian Party has adopted and published Convention Rules and Bylaws, a Statement of Principles and a Libertarian Party Platform. As the political organization of the larger libertarian movement, the Libertarian Party participates in federal, state and local campaigns to disseminate its principles and platform, to promote discussion of issues which its members believe are of importance to the electorate, and to advocate libertarian solutions to problems confronting the nation.

The Libertarian National Committee sanctions affiliate parties in each of the fifty states and in the District of Columbia, the Appellee Libertarian Party of California constituting the duly recognized state party affiliate for the State of California.

Because the responsibilities of the Libertarian National Committee include promoting the growth and development of its affiliate parties into viable and effective political organizations in every state, its perspective is broader than that of the Libertarian Party of California. Incident to this broader perspec-

tive, the Libertarian National Committee is particularly sensitive to state regulation which may tend to dilute the national party's platform or to distort the message of its presidential ticket. In a political environment in which virtually all political power is effectively consolidated in the hands of the two established "mainstream" political parties, compromise of the principles for which the Libertarian Party stands would eliminate its very reason for being.

Specifically concerning the instant case, the Libertarian National Committee is especially alarmed by the Appellants' assertion that the State of California has a legitimate state interest in molding all political parties into "umbrella" parties. Successful implementation of such a policy would narrow the breadth of national public policy debate and undermine the very purpose for which the members of the Libertarian Party have associated.

Summary of Argument

The political process by which candidates are nominated and elected to the offices of President and

Vice President of the United States is an area of penultimate national interest. The public policy debate engendered by the quadrennial presidential campaign is, to our system of government, an indispensable forum i· which the problems confronting the nation may be addressed and in which alternative solutions may be proposed and discussed by the national electorate. To a greater or lesser degree, congressional and senatorial campaigns provide similar forums which are integral to this national public policy debate.

Clearly, the states have an important interest in maintaining the integrity of the electoral process. Even so, state statutes which restrict participation in the political process or which narrow the content of the public policy debate are suspect under the traditional application of the constitutional guarantees afforded political expression by the First and Fourteenth Amendments.

Where the effects of state policy extend beyond a state's borders to stifle the national public policy debate, an important national interest is implicated and,

consequently, a broader analysis is warranted. State policies implicating the important national interest in vigorous political debate and contrary to the associational purposes for which "non-umbrella" political parties are created run afoul of the Supremacy Clause.

In the instant case, the state interest asserted by the Appellants to justify its intrusion into the internal affairs of political parties strikes at the soul of those political parties forged upon the anvil of uncompromising conscience. State statutes in furtherance of such asserted state interests impermissibly burden associational rights in a national context by application of the Supremacy Clause.

Argument

The Plaintiffs brought suit to challenge the constitutionality of several California statutes proscribing certain candidate endorsements, regulating the composition and selection of certain political party committees, and regulating the terms of office of certain political party officers. In defense, the Appellants have asserted that the challenged statutes

further a compelling state interest in maintaining "the stability of its governmental system." Appellants' Opening Brief at 43. "California uses its electoral system to promote the existence of 'umbrella' parties in furtherance of its interest in the stability of its political system." Appellants' Opening Brief at 42. This asserted state interest ignores the important contributions 'non-umbrella' political parties have made in the past and, if accepted by the Court as a legitimate state interest, threatens the continued existence of such national political parties in the future.

I. The Appellants' asserted state interest in promoting "umbrella" parties implicates an important national interest in unfettered public policy debate.

The Appellants' asserted state interest in promoting "umbrella" parties implicates an important national interest, that of "assuring the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." New York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964). "Competition in ideas and governmental policies is at the core of our electoral

process and of the First Amendment freedoms." Williams v. Rhodes, 393 U.S. 23, 32 (1968).

Indeed, the political process by which candidates are nominated and elected to the offices of President and Vice President of the United States, and to a greater or lesser degree, by which congressional and senatorial candidates are nominated and elected, is an area of penultimate national interest. See Cousins v. Wigoda, 419 U.S. 477, 489 (1975). The biennial public policy debate is an indispensable forum in which the problems confronting the nation may be addressed and in which alternative solutions may be proposed and discussed by the national electorate.

No less so than the state's interest in regulating access to the ballot, the state's interest in promoting one form of party organization over another should be

> considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 185-186 (1979).[1]

II. Statutes implementing the Appellants' asserted state interest have an impact extending beyond the borders of the State of California.

While "umbrella" parties may be best suited to achieve electoral success by creating compromise coalitions of "mainstream" constituencies, they are, for that same reason, built on the shifting sands of political expediency and not on the bedrock of principle. As the Court recognized in Williams v. Rhodes, 393 U.S. at 33, "the principal policies of the major parties change to some extent from year to year." Other types of political parties, "ideological parties" (e.g. the Socialist Workers Party and the Libertarian Party),

---

[1] The Progressive Party never elected a President, never elected more than one senator or seventeen congressmen at one time, never controlled a state legislature. Nonetheless, within a period of forty years virtually every plank of its platform had been enacted into law. Progressive Party innovations co-opted by the 'umbrella' parties include the social security, the graduated income tax, child labor laws, compulsory education laws, the popular election of senators, women's suffrage, minimum wage, the Interstate Commerce Commission, the Federal Reserve Board, the Food and Drug Administration and the National Park Service, to name a few.

"single issue parties" (e.g. the Abolitionist Party and the Prohibition Party), and "personality parties" (e.g. John Anderson's National Unity Party and George Wallace's American Independent Party) are equally important forms of political association. Members of such political parties are, like the members of the "umbrella" parties, entitled to access to in the national public policy debate and share equally constitutional protections guaranteeing their associational rights.

By attempting to force all political parties into the mold of "umbrella" parties, the State of California seeks to alter the character of "ideological parties" and "single issue parties" whose distinguishing characteristic is their unwillingness to compromise the principles or the issues which set them apart from the established political parties.

Given the State of California's ranking in population and votes in the Electoral College and its prominence in the national public policy debate, its acknowledged policy in favor of "umbrella" parties casts a shadow far beyond its borders. Its effects extend to

the core of every national political organization which seats California delegates at its national convention.

As the Appellants acknowledge, "umbrella" parties achieve electoral success by forging winning coalitions through compromise and accommodation. Appellants' Opening Brief at 42. State policies calculated to "offer the voters choices between personalities" and "vague, ambiguous, and overlapping party programs," Id., may be fine for the Appellants, but there are few in the Libertarian Party who would agree.

III. Statutes implementing the Appellants' asserted state interest are contrary to the important national interest in unfettered public policy debate.

The Appellants' paternalistic promotion of "umbrella" parties belies an underlying premise that only the associational rights of those who associate to achieve electoral success warrant full fledged First and Fourteenth Amendment protection. In the view of Appellants, other political parties unwilling to "surrender" their distinctive identities and enter into a "symbiotic relationship" with the state can be accorded somewhat

less First and Fourteenth Amendment protection with impunity.

Either the Libertarian Party must forego its attempt to become a national political party with viable state parties in every state or, in the alternative, it must surrender its identity to exist in coerced symbiosis with the State of California as simply another amorphous "umbrella" party. By limiting the opportunities of like-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Anderson v. Celebrezze, 460 U.S. 780, 794 (1983).

As applied to national political parties and their California affiliated state parties, California's enunciated policy is inconsistent with, and contrary to, the important national interest of unfettered public policy debate. Equally important, California's enunciated policy is inconsistent with, and contrary to, the obvious interest of the national political parties in maintaining

their own political ideologies untainted by statutory symbiosis with the State of California.

IV. The challenged statutes implicate an important national interest not admitting of divers treatment by the states.

When one state, by imposing regulations upon national political parties, interferes with the efforts of her sister states to foster broad political debate, it intrudes into an area not admitting of divers treatment by the states. By blurring the associational distinctions between national political parties, the Appellants' acknowledged policy of promoting "umbrella" political parties not only undermines the integrity of the "non-umbrella" political parties, it undermines the integrity of the political processes in her sister states as well.

Altering the message of "ideological" and "one-issue" state political parties within the State of California necessarily distorts the message of the national political parties with which they are affiliated. Eventually, the original message will be lost entirely in the process of accommodation for the sake of electoral success.

Such a course is entirely inconsistent with the primary values protected by the First Amendment, "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

V. The Appellants' assertion that the challenged statutes reflect party policy is unfounded.

The Appellants' assertion that the challenged statutes reflect the party policy of the Appellee Libertarian Party of California is unfounded. Neither Libertarian Party, nor its affiliate state party, has done more than acquiesce to presumptively valid state statutes to which criminal sanctions attach until such time as they could be opportunely challenged in court.

Quite contrary to the Appellants' assertions, while Appellees associated with the Republican Party of California and the Democratic Party of California have fellow party members sitting in the California legislature to sponsor statutes tailored to effect party policy, the Libertarian Party of California does not now have, nor has it ever had, a Libertarian legislator to sponsor such

legislation on its own behalf. That the Libertarian Party of California is presently functioning under organizational requirements enacted for the Peace and Freedom Party belies the Appellants' assertion.

Conclusion

The Appellants' asserted state interest in molding all political parties into "umbrella" parties imposes impermissible burdens on associational rights when examined in the context of its impact on national political parties and its deleterious effect on the national public policy debate.

Respectfully submitted,

STUART R. BLATT
Blatt & Rosenberg-Blatt
1101 St. Paul Street, #403
Baltimore, Maryland 21202
301-539-7800

Attorney for Amicus Curiae

Of Counsel:
Stephen R. Fielder
P. O. Drawer 1760
Shepherdstown, West Virginia 25443
304-263-8445